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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,734	03/25/2004	Cesar Hernan Guerrero	2881/101	5645
2101	7590	11/04/2005	EXAMINER	
BROMBERG & SUNSTEIN LLP 125 SUMMER STREET BOSTON, MA 02110-1618			MATZEK, MATTHEW D	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/808,734

Applicant(s)

GUERRERO ET AL.

Examiner

Matthew D. Matzek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-95 is/are pending in the application.
- 4a) Of the above claim(s) 47-64, 66-83 and 92-94 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46, 65, 84-91 and 95 is/are rejected.
- 7) ☒ Claim(s) 65, 84 and 95 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/25/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-46, 65, 84-91 and 95, drawn to a breathable, coated garment, classified in class 442, subclass 94.
- II. Claims 47-64, 66-83 and 92-94, drawn to a method of making a breathable, coated garment, classified in class 427, various subclasses.

The inventions are distinct, each from the other because of the following reasons:

1. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case a wide variety of articles may be made by applying a composition capable of resisting liquid passage and being breathable such as awning fabrics and house wraps.
2. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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4. During a telephone conversation with Steven Saunders on 10/13/2005 a provisional election was made without traverse to prosecute the invention of a breathable, coated garment, claims 1-46, 65, 84-91 and 95. Affirmation of this election must be made by applicant in replying to this Office action. Claims 47-64, 66-83, 92-94 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### ***Claim Objections***

6. Claims 65, 84 and 95 are objected to because of the following informalities: it is dependent upon withdrawn claims 47, 66 and 92, respectively. Appropriate correction is required. For examination purposes the limitations of the withdrawn claims have been incorporated into the objected claims.

7. Claim 33 is objected to as "fluorochemical" is misspelled.

#### ***Claim Rejections - 35 USC § 103***

8. Claims 1-19, 22-24, 26, 28-38, 41, 43, 45, 65, 84-89, 91 and 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al (US 2005/0186873 A1) in view of Soane et al. (US 6,607,994).

- a. Wang et al. teach a composition and method for treating textile substrates to obtain superior liquid repellent properties. The surface of the fabric may be texture-treated followed by chemical treatment using fluorocarbon repellent compositions. All fabrics inherently have pores. The treated textile substrates achieve superior water and oil repellency (Abstract). The treated textile effectively prevents liquid from passing through the plurality of pores as the textile is water repellent. Fluorochemical compounds available for use in the applied invention include fluorochemical urethanes [0081]. The invention also teaches that it is advantageous to add a crosslinking agent to the coating composition [0064]. In addition to the fluorochemicals repellent silicones and waxes may be employed in the invention to achieve repellent properties [0083]. To create a desired final product the textile may also be treated with wrinkle-resistor, odor neutralizer and fragrances [0067]. The textile may be treated to achieve a desired porosity [0068]. Claims 23 and 88 are rejected because as the odor is neutralized by the applied composition its concentration is decreased thereby decreasing its vapor pressure.
- b. The applied invention is silent as to the creation of a breathable coating for use on a denim fabric and the use of microencapsulated odor neutralizing compositions on the fabric.
- c. Soane et al. teach a preparation useful for the permanent treatment of textiles such as denim (Abstract and col. 13, lines 36-41). The fabric may have a broad variety of properties including air permeability and water vapor

breathability (col. 10, lines 34-40). The treatment is directed to an agent or other payload that is encapsulated within a polymer shell or matrix or that has a surface coating (col. 1, lines 51-54). The encapsulated composition may comprise softeners and fragrances (col. 2, lines 31-35). The diameter of the capsules may range from 1 to about 1000nm or 1 micron (col. 6, lines 61-64). The architecture of the polymeric encapsulated particle is that it can be formulated and fine-tuned to exhibit controlled release of the entrapped payload (col. 2, lines 31-34).

d. Since Wang et al. and Soane et al. are from the same field of endeavor (i.e. polymeric treatments for textiles), the purpose disclosed by Soane et al. would have been recognized in the pertinent art of Wang et al.

e. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the article of Wang et al. to be a porous denim garment with microencapsulated odor neutralizing composition. The skilled artisan would have been motivated by the fact that denim is a commonly texturized fabric and that by encapsulating the odor neutralizing composition of Wang et al. it can be fine-tuned to exhibit controlled release of the entrapped payload (col. 2, lines 31-34).

9. Although Wang et al. and Soane et al. do not explicitly teach the claimed feature of the plurality of pores having a specified surface tension or the fabric's surface tension, it is reasonable to presume that said properties are inherent to Wang et al. and Soane et al. Support for said presumption is found in the use of like materials (i.e.

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denim coated with a urethane composition comprising a fluorochemical and wax). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of a specified pore or fabric surface tension would obviously have been present one the Wang et al. and Soane et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

10. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80.

11. Claims 20 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al (US 2005/0186873 A1) in view of Soane et al. (US 6,607,994) as applied to claims 19 and 38 above, and further in view of Seki et al. (US 3,029,164). The previously applied inventions are silent as to the use of an inorganic salt and 2-imidazolidinone in the cross-linking composition.

a. Seki et al. teach an application of 2-imidazolidinones for use in rendering the fabric crease-proof (col. 6, lines 54-58). Along with the 2-imidazolidinone, inorganic salts may be used to cross-link the resinous coating (col. 7, lines 15-21). Along with the curing catalysts, other additives such as softening agent and water repellents may be employed into the coating composition (col. 7, lines 39-45).

b. Since Wang et al. and Seki et al. are from the same field of endeavor, (i.e. polymeric treatments for textiles), the purpose disclosed by Seki et al. would have been recognized in the pertinent art of Wang et al.

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c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to incorporate an inorganic salt and 2-imidazolidinone into the cross-linking composition with the motivation of rendering the treated fabric crease-proof (col. 6, lines 54-58, Seki et al.).

12. Claims 21, 27, 40 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al (US 2005/0186873 A1) in view of Soane et al. (US 6,607,994) as applied to claims 18, 26, 37 and 45 above, and further in view of Todd et al. (US 6,861,520). The previously applied inventions are silent as to the use of an amino-modified copolymer silicone as the softening agent or glyoxal as a crosslinking agent.

a. Todd et al. teach a process for chemically bonding an odor-encapsulating agent to textiles, such as articles of clothing, with a cross-linking agent (Abstract). The composition may also comprise a softening agent such as an amino-functional silicone emulsion (col. 12, lines 26-27). The Examiner takes the position that the applied amino-functional silicone emulsion is equivalent to the claimed amino-modified copolymer silicone. Conventional techniques for preparing cellulosic containing materials may employ cross-linking with a mixture of glyoxal and imidazolidone (col. 4, lines 21-27).

b. Since Wang et al. and Todd et al. are from the same field of endeavor (i.e. polymeric treatments for textiles), the purpose disclosed by Todd et al. would have been recognized in the pertinent art of Wang et al.



c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have made the treatment composition of Wang et al. with the softening agent and cross-linking agent of Todd et al. with the motivation of creating a softer article with a coating treatment that has been crosslinked to the fabric.

13. Claims 25, 42, 44 and 90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al (US 2005/0186873 A1) in view of Soane et al. (US 6,607,994) as applied to claims 22, 41 and 87 above, and further in view of Gagliardi et al. (US 6,245,693) as evidenced by Iwahashi (US 4,915,939). The previously applied inventions are silent as to the use of phosphate salts of 2,2'-oxybisethanol-2,2'-(methylimino)bisethanol as an odor neutralizing agent.

a. Gagliardi et al. teach a laminated article comprising an odor absorber (Abstract). Odor controlling agents available for the applied invention include inorganic salts such as phosphate salts. Iwahashi demonstrates that 2,2'-(methylamino)bisethanol may be use as a deodorant composition (col. 2, lines 10-30).

b. Since Wang et al. and Gagliardi et al. are from the same field of endeavor (i.e. articles comprising odor absorbing agents), the purpose disclosed by Gagliardi et al. would have been recognized in the pertinent art of Wang et al.

c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have used phosphate salts of 2,2'-oxybisethanol-2,2'-(methylimino)bisethanol as an odor neutralizing agent

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motivated by the desire to create an article that absorbs odors emitted by the garment's wearer.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**NORCATORRES**  
**PRIMARY EXAMINER**

mdm